

ORIGINAL

NORTHERN DISTRICT OF ILLINOIS
FILED
Page 1 of 29 PageID 1

Page 1 of 29 PageID 1

OCT 21 2005

COURT CLERK, U.S. DISTRICT COURT
TEXAS
By _____ Deputy

ANDREW J. HUNT,

Plaintiff,

VS.

HOME DEPOT U.S.A., INC., and
HOME DEPOT INTERNATIONAL, INC.,

Defendants.

6-05CV 074 C

CIVIL ACTION NO.

JURY REQUESTED

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Home Depot U.S.A. Inc. (“Home Depot”), Defendant in this cause, files this Notice of Removal pursuant to 28 U.S.C. §§1441 and 1446(a), and as grounds for removal shows the following:

I. BACKGROUND

1. Home Depot and Home Depot International, Inc. (hereinafter referred to as
“HDI”) are Defendants in an action pending in the 35th Judicial District Court of Brown County,
Texas, entitled *Andrew J. Hunt vs. Home Depot U.S.A., Inc. and Home Depot International, Inc.*,
Cause No. CV0509421 (hereinafter referred to as the “State Court Action”). The Plaintiff’s
Original Petition and the accompanying citation were served on HDI and Home Depot on
September 15, 2005. HDI and Home Depot answered the suit on or about October 17, 2005.
However, HDI is not a proper party to this action for the reasons discussed below.

6. This notice of removal is timely filed under 28 U.S.C. § 1446(b) within 30 days after Home Depot received papers indicating that this case is one which is removable. True and

correct copies of all process, pleadings, and orders served in the State Court Action are attached hereto under Exhibit "B" as required by 28 U.S.C. § 1446(a).

II. IMPROPERLY JOINED DEFENDANT

7. Plaintiff's Original Petition named HDI as a Defendant. HDI is a corporation incorporated under the laws of the state of Delaware with its principal place of business in Texas. However, HDI is not a proper party to this action. HDI is a stock holding company that neither owns nor operates any retail store in Texas, and, specifically does not own nor operate the Home Depot retail store in Brownwood, Texas. (*See* Declaration of Rick Feeley under Exhibit "C"). There is no possibility that Plaintiff could recover against HDI, and, thus, HDI is fraudulently joined and its presence in the action should be disregarded when considering diversity jurisdiction.

III. JURISDICTION AND VENUE

11. Removal of this action is proper under 28 U.S.C. §1441. This is a civil action brought in a state court, and the federal district courts have original jurisdiction under 28 U.S.C. §1332 because Plaintiff and the properly joined and served Defendant (Home Depot) are diverse in citizenship, and the amount in controversy exceeds \$75,000.

12. Every Defendant that is properly joined and served is now and was at the time the action was commenced diverse in citizenship from every Plaintiff. No properly joined and served Defendant is or was at the time the suit was commenced a citizen of the State of Texas.

13. Plaintiff Andrew J. Hunt is a resident of Brown County, Texas.

16. Home Depot U.S.A. Inc. is a corporation incorporated under the laws of the State of Delaware with its principal place of business, both now and at the time this action was commenced, in Atlanta, Georgia. Home Depot U.S.A. Inc. is and was at the time this action was commenced a citizen of the States of Delaware and Georgia and of no other state.

17. Home Depot International, Inc. is a corporation incorporated under the laws of the State of Delaware with its principal place of business, both now and at the time this action was commenced, in Bedford, Texas. Home Depot International, Inc. is not a proper defendant, and thus should not be considered when determining diversity jurisdiction.

19. Home Depot constitutes the only Defendant in this cause who is properly joined and served.

20. Venue is proper in this district and division under 28 U.S.C. §1441(a) because this district and division embrace the place where the removed action has been pending.

IV. JURY DEMAND

21. Home Depot demands a trial by jury.

V. NOTICE TO STATE COURT

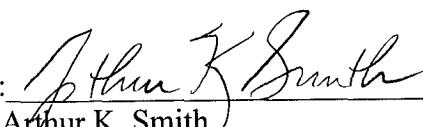
22. On this date, a copy of this notice of removal was filed with the clerk of the state court where this cause has been pending. Home Depot has also given adverse parties written notices of this notice of removal as required by 28 U.S.C. § 1446(d).

VI. CONCLUSION

For these reasons, Home Depot pursuant to the removal statute and in conformance with the requirements set forth in 28 U.S.C. §1446, removes this cause from the 35th Judicial District Court of Brown County, Texas, to this Court on this 20th day of October 2005.

Respectfully submitted,

Law Offices of Arthur K. Smith,
A Professional Corporation

By: 
Arthur K. Smith
Attorney-in-Charge
State Bar No. 18534100

507 Prestige Circle
Allen, Texas 75002-3438
Telephone: 469/519-2500
Facsimile: 469/519-2555

ATTORNEY FOR DEFENDANT
HOME DEPOT U.S.A., INC.

CERTIFICATE OF SERVICE

On the 20th day of October, 2005, a true and correct copy of the above and foregoing pleading was served upon counsel for Plaintiff via certified mail, return receipt requested, in accordance with Rule 5 of the Federal Rules of Civil Procedure.


Arthur K. Smith

150005.49\Fed Notice Removal

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

ANDREW J. HUNT, §
§
Plaintiff, §
§
vs. § CIVIL ACTION NO. _____
§
HOME DEPOT U.S.A., INC., and §
HOME DEPOT INTERNATIONAL, INC., §
§
Defendants. § JURY REQUESTED

INDEX OF DOCUMENTS FILED WITH NOTICE OF REMOVAL

EXHIBIT A Index of Documents Filed with Notice of Removal

EXHIBIT B State Court Documents

| TAB NO. | STATE COURT DOCUMENT | DATE FILED |
|----------------|--|-------------------|
| 1 | Certified Copy of Court's Docket Sheet | N/A |
| 2 | Plaintiff's Original Petition | 09/15/05 |
| 3 | Return of Citation for Defendant Home Depot U.S.A., Inc. | 09/21/05 |
| 4 | Return of Citation for Defendant Home Depot, International | 09/21/05 |
| 5 | Original Answer and Special Exceptions of Defendant Home Depot U.S.A., Inc. | 10/14/05 |
| 6 | Original Answer and Special Exceptions of Defendant Home Depot, International | 10/14/05 |

EXHIBIT C Declaration of Richard W. Feeley

EXHIBIT B
STATE COURT DOCUMENTS

TAB NO. 1

CASE # CV0509421

DOCKET BOOK REPORT

COURT: DISTRICT COURT

10/19/2005

CAUSE: INJURY/DAMAGE WITH NON MOTOR VEHICLE

STYLE: ANDREW J. HUNT

VS HOME DEPOT, USA, INC. AND
HOME DEPOT INTERNATIONAL, INC.PLAINTIFFNAME

HUNT, ANDREW J.

ATTORNEYMCDONALD, CHARLES
P O BOX 74
BANGS TX 76823
325-752-7321DEFENDANTNAMEHOME DEPOT INTERNATIONAL, INC.
C/O CT. CORPORATION SYSTEM
350 N. ST. PAUL STREET
DALLAS, TX 75201ATTORNEYHOME DEPOT, USA, INC.
C/O CT. CORPORATION SYSTEM
350 N. ST. PAUL STREET
DALLAS, TX 75201

TRANSACTIONS FOR ALL PARTIES

REPORT FOR ALL DATES

| | | |
|--------------------|---|---------|
| 09/19/2005 | PLAINTIFF'S ORIGINAL PETITION - TWO CITATIONS - | 311.00- |
| HUNT, ANDREW J. | SERVICE BY CERTIFIED MAIL (PC) | |
| 09/19/2005 | PAYMENT | 311.00 |
| HUNT, ANDREW J. | | |
| 09/26/2005 | GREEN CARD RETURNED-HOME DEPOT USA INC. 9/21/05 | |
| HOME DEPOT, USA, I | SE | |
| 09/26/2005 | GREEN CARD RETURNED-HOME DEPOT INTERNATIONAL | |
| HOME DEPOT INTERNA | 9/21/05 SE | |

CERTIFIED TRUE AND CORRECT COPY CERTIFICATE

STATE OF TEXAS

COUNTY OF BROWN

The document to which this certificate is affixed, containing 1
pages, is a full, true and correct copy of the original on file and of record in
my officeATTEST: October 19 2005


JAN BROWN, DISTRICT CLERK
BROWN COUNTY, TEXAS
BY Sharon Eddings DEPUTY

TAB NO. 2

FILED

At 12:53 O'clock PM

CAUSE NO. CV05D9421

SEP 19 2005

ANDREW J. HUNT
Plaintiff

VS.

IN THE DISTRICT COURT Court Brown Co TX

OF BROWN COUNTY, TEXAS

HOME DEPOT, USA, INC.
and HOME DEPOT INTERNATIONAL, INC. 35TH JUDICIAL DISTRICT
Defendants

Jan Brown

J.C. Devo.

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, **ANDREW J. HUNT**, Plaintiff, complaining of Home Depot USA, Inc. and Home Depot International, Inc., each probably doing business as "The Home Depot" in Brownwood, Texas, and for cause of action would respectfully show the court as follows:

1. Plaintiff is a resident of Brown County, Texas. Defendant's may be served c/o Ct. Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201.
2. Discovery is under Level 3.

FACTS:

3. On or about April 14, 2005 in Brownwood, Brown County, Texas, Plaintiff returned some lateral line to the store which has "The Home Depot" on it's sign. He asked for a refund of the purchase price.

4. The lady in "Customer Service Department" of the store, refused to refund any money. When Plaintiff insisted that he did not want a "gift certificate" but the cash, she called a person she referred to as "The Manager". "The Manager" argued a while and when Plaintiff insisted on cash, The Manager called the Brownwood police to eject Plaintiff from the store. The police issued Plaintiff a "Criminal Trespass Warning" and said that this meant Plaintiff had to leave the store and the parking lot and never come back. "The Manager" then handed me a "Gift Certificate" for \$90.00.

5. The Home Depot has stolen \$81.24 from Plaintiff.

RECOVERY REQUESTED

6. Defendant's are guilty of theft of 16 sticks of lateral line.

7. Defendant's action caused Plaintiff great embarrassment and public shame and humiliation. That he told the Defendant he was hurting from recent operations but they ignored it, causing him great pain and suffering.

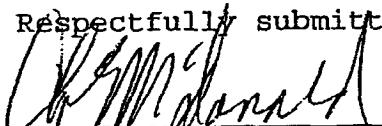
8. The damage to Plaintiff's spotless reputation that Plaintiff has enjoyed and maintained for 75 years amounts to Four Million Five Hundred Thousand Dollars (\$4,500,000.00) and punitive damages for stealing my lateral line should be and additional One Million Five Hundred Thousand Dollars (\$1,500,000.00). (anything less would be no lesson at all to either of the Defendants.)

9. That the theft of Plaintiff's property requires that Defendants be required to pay the reasonable and necessary attorney fees that are alleged to be not less than \$10,000.00 for trial to Court; \$5,000.00 for appeal to Court of Appeals and an additional \$5,000.00 for appeal to Supreme Court of Texas.

PRAYER

10. Plaintiff prays that upon hearing he be given judgment as herein alleged, that the court order Defendant or either of them to cause the "Criminal Trespass Warning" to be annulled, for attorney fees in not less than \$10,000.00 as herein alleged; that Defendants be required to issue a public apology for the action of the person called "The Manager" and for general relief.

Respectfully submitted,



Charles E. McDonald
P. O. Box 74,
Bangs, Texas 76823
(325) 752-7321
SBN 13538000
ATTORNEY FOR PLAINTIFF

TAB NO. 3

CT CORPORATION
A WoltersKluwer Company

**Service of Process
Transmittal**
09/21/2005
Log Number 510558390

TO: Nancy Bunker
The Home Depot, Inc.
2455 Paces Ferry Road, Building C-8th Floor
Atlanta, GA, 30339-4024

RE: **Process Served in Texas**

FOR: Home Depot U.S.A., Inc. (Domestic State: DE)

15 15 15 15 15
SEP 2005
RECD

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Andrew J. Hunt, Pltf. vs. Home Depot, USA, Inc. and Home Depot International, Inc., Dfts.

DOCUMENT(S) SERVED: Citation, Plaintiffs Original Petition

COURT/AGENCY: 35th Judicial District Court of Brown County, Texas, . . .
Case # CV0509421

NATURE OF ACTION: Monies Due and Owing - Materials Rendered - Failure to refund any money for Lateral lines.

ON WHOM PROCESS WAS SERVED: CT Corporation System, Dallas, TX

DATE AND HOUR OF SERVICE: By Certified Mail on 09/21/2005 postmarked on 09/19/2005

APPEARANCE OR ANSWER DUE: 10:00 a.m. on the Monday next after the expiration of 20 days

ATTORNEY(S) / SENDER(S): Charles McDonald
P.O. Box 74
Bangs, Texas, 76823

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day, 790160648474

SIGNED: CT Corporation System
PER: Beatrice Casarez
ADDRESS: 350 North St. Paul Street
Dallas, TX, 75201
TELEPHONE: 214-979-1172

Page 1 of 1 / AG

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action.

CITATION BY CERTIFIED MAIL

CLERK OF THE COURT
JAN BROWN
200 S. BROADWAY
BROWNSWOOD, TEXAS 76801

ATTORNEY FOR PLAINTIFF
CHARLES MCDONALD
P O BOX 74
BANGS TX 76823

THE STATE OF TEXAS

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO: HOME DEPOT, USA, INC., C/O CT. CORPORATION SYSTEM, DALLAS, TX 75201
DEFENDANT, GREETING:

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable District Court of Brown County, Texas at the Courthouse of said County in Brownwood, Texas.

Said Plaintiff's Petition was filed in said court on the 19th day of September 2005 in this case, numbered CV0509421 on the docket of said court, and styled:

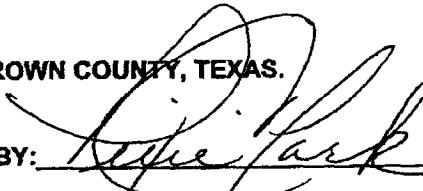
ANDREW J. HUNT
vs.
HOME DEPOT, USA, INC. AND
HOME DEPOT INTERNATIONAL, INC.

The nature of Plaintiff's demand is fully shown by a true and correct copy of Plaintiff's Original Petition accompanying this citation and made a part hereof.

The officer executing this writ shall promptly mail the same according to requirements of law, and the mandates thereof and make due return as the law directs.

Issued and given under my hand and seal of said Court at Brownwood, Texas this the 19th day of September, 2005.

ATTEST: JAN BROWN, CLERK, DISTRICT COURT, BROWN COUNTY, TEXAS.

BY:  DEPUTY

I certify that on the 19th day of September, 2005 at 5:00 p.m., I mailed to HOME DEPOT, USA, INC. Defendant by registered mail or certified mail, with delivery restricted to addressee only, return receipt requested, a true copy of this citation with a copy of the petition attached hereto.

BY: _____ DEPUTY

ATTACH RETURN RECEIPTS HERE

TAB NO. 4

CT CORPORATION
A WoltersKluwer Company

**Service of Process
Transmittal**
09/21/2005
Log Number 510558377

TO: Nancy Bunker
The Home Depot, Inc.
2455 Paces Ferry Road, Building C-8th Floor
Atlanta, GA, 30339-4024

RE: **Process Served in Texas**

FOR: Home Depot International, Inc. (Domestic State: DE)

REC'D
SAC

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Andrew J. Hunt, Plif. vs. Home Depot, USA, Inc. and Home Depot International, Inc., Dfts.

DOCUMENT(S) SERVED: Citation, Plaintiffs Original Petition

COURT/AGENCY: 35th Judicial District Court of Brown County, Texas, . . .
Case # CV0509421

NATURE OF ACTION: Monies Due and Owing - Materials Rendered - Failure to refund any money for Lateral lines.

ON WHOM PROCESS WAS SERVED: C T Corporation System, Dallas, TX

DATE AND HOUR OF SERVICE: By Certified Mail on 09/21/2005 postmarked on 09/19/2005

APPEARANCE OR ANSWER DUE: 10:00 a.m. on the Monday next after the expiration of 20 days

ATTORNEY(S) / SENDER(S): Charles McDonald
P.O. Box 74
Bangs, Texas, 76823

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day, 790160648474

SIGNED: C T Corporation System
PER: Beatrice Casarez
ADDRESS: 350 North St. Paul Street
Dallas, TX, 75201
TELEPHONE: 214-979-1172

Page 1 of 1 / AG

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CITATION BY CERTIFIED MAIL

**CLERK OF THE COURT
JAN BROWN
200 S. BROADWAY
BROWNWOOD, TEXAS 76801**

**ATTORNEY FOR PLAINTIFF
CHARLES MCDONALD
P O BOX 74
BANGS TX 76823**

THE STATE OF TEXAS

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

**TO: HOME DEPOT, INTERNATIONAL, INC., C/O CT. CORPORATION SYSTEM,
DALLAS, TX 75201 DEFENDANT, GREETING:**

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable District Court of Brown County, Texas at the Courthouse of said County in Brownwood, Texas.

Said Plaintiff's Petition was filed in said court on the 19th day of September 2005 in this case, numbered CV0509421 on the docket of said court, and styled:

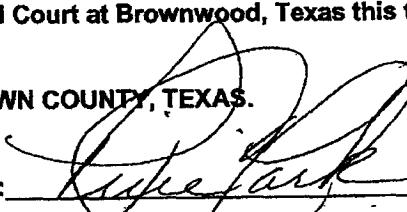
**ANDREW J. HUNT
vs.
HOME DEPOT, USA, INC. AND
HOME DEPOT INTERNATIONAL, INC.**

The nature of Plaintiff's demand is fully shown by a true and correct copy of Plaintiff's Original Petition accompanying this citation and made a part hereof.

The officer executing this writ shall promptly mail the same according to requirements of law, and the mandates thereof and make due return as the law directs.

Issued and given under my hand and seal of said Court at Brownwood, Texas this the 19th day of September, 2005.

ATTEST: JAN BROWN, CLERK, DISTRICT COURT, BROWN COUNTY, TEXAS.

BY:  DEPUTY

I certify that on the 19th day of September, 2005 at 5:00 p.m., I mailed to HOME DEPOT, USA, INC. Defendant by registered mail or certified mail, with delivery restricted to addressee only, return receipt requested, a true copy of this citation with a copy of the petition attached hereto.

BY: _____ DEPUTY

ATTACH RETURN RECEIPTS HERE

TAB NO. 5

CAUSE NO. CV0509421

ANDREW J. HUNT,

Plaintiff,

vs.

HOME DEPOT U.S.A., INC.,

and HOME DEPOT INTERNATIONAL, INC.,

Defendant.

IN THE DISTRICT COURT

OF BROWN COUNTY, TEXAS

35TH JUDICIAL DISTRICT

**ORIGINAL ANSWER OF DEFENDANTS HOME DEPOT U.S.A., INC. AND HOME
DEPOT INTERNATIONAL, INC. TO PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE:

COME NOW Home Depot U.S.A., Inc. and Home Depot International, Inc. (hereinafter collectively referred to as "Defendants"), Defendants in the above-entitled and numbered cause, and for their Original Answer to Plaintiff's Original Petition would respectfully show unto the Court as follows:

ORIGINAL ANSWER

I.

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendants hereby enter a general denial, and demand that Plaintiff be required to prove his allegations by a preponderance of the evidence.

II.

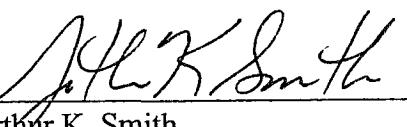
Pursuant to the Texas Government Code § 52.046 (Vernons 1998), Defendants request that a court reporter attend all sessions of the Court in conjunction with this civil action.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that Plaintiff take nothing by

this action and that Defendants be dismissed with their costs, and for such other relief, both general and specific, at law or in equity, to which Defendants may be justly entitled.

Respectfully submitted,

LAW OFFICES OF ARTHUR K. SMITH,
A Professional Corporation

By: 

Arthur K. Smith
State Bar No. 18534100

507 Prestige Circle
Allen, Texas 75002
Telephone: (469) 519-2500
Facsimile: (469) 519-2555

ATTORNEY FOR DEFENDANT
HOME DEPOT U.S.A., INC. AND
HOME DEPOT INTERNATIONAL, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th day of October, 2005, a copy of the foregoing pleading was forwarded via facsimile and via U.S. mail, first class, postage prepaid to Plaintiff's counsel.


Arthur K. Smith

162505.127/Answer.Org

EXHIBIT C
DECLARATION OF RICHARD W. FEELEY

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION**

ANDREW J. HUNT,

§

Plaintiff,

§

vs.

CIVIL ACTION NO. _____

**HOME DEPOT U.S.A., INC., and
HOME DEPOT INTERNATIONAL, INC.,**

§

Defendants.

§

JURY REQUESTED

DECLARATION OF RICHARD W. FEELEY

1. "My name is Richard W. Feeley. I am over the age of 21 and do not suffer from any disabilities that would prevent me from providing sworn testimony. I am making this declaration in support of the Notice of Removal filed by Home Depot U.S.A., Inc. in the above-referenced lawsuit, and I do not intend to waive any privilege that may be available to me in connection with my communications with my legal counsel."

2. "I have been continuously employed by Home Depot U.S.A., Inc. since 1999. My title at the present time is Director – Legal. Based on experience gained through my employment with Home Depot U.S.A., I have personal knowledge of the facts stated herein, and those facts are all true and correct."

3. "Throughout the period of my employment with Home Depot U.S.A., Inc., Home Depot International, Inc. has operated as a stock "holding" company which has directors and officers, but it has not had any employees other than one part-time employee whose duties are limited to the provision of administrative and bookkeeping services."

4. "Home Depot International, Inc. is now and, during the tenure of my employment with Home Depot U.S.A., Inc., always has been a company separate and distinct from Home Depot U.S.A., Inc. Throughout such period of time, Home Depot U.S.A., Inc. has been a wholly

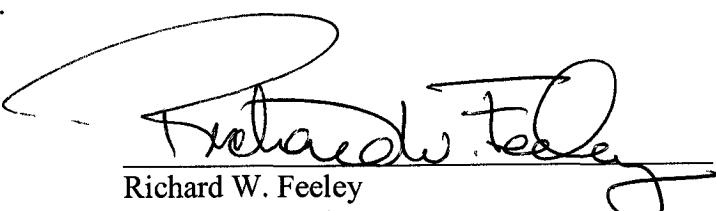
owned subsidiary of The Home Depot, Inc. Home Depot International, Inc. is also a wholly owned subsidiary of The Home Depot, Inc. Moreover, there have not been any employees of Home Depot International, Inc. who have also been employees of Home Depot U.S.A., Inc.”

5. “Home Depot International, Inc. does not, now own or operate, nor has it ever owned or operated any Home Depot store. Further, Home Depot International, Inc. does not procure or supply, nor has it ever procured or supplied, any of the merchandise sold in any Home Depot store, and has not contracted with any Home Depot store to provide it with any product or service.”

6. ‘Home Depot International, Inc. plays no role and has never played any role in the management or decision making process regarding operations of any Home Depot store.”

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES THAT THE FOREGOING STATEMENTS IN MY DECLARATION ARE TRUE AND CORRECT.

DATED: OCTOBER 1st, 2005.



Richard W. Feeley
Director – Legal
Home Depot U.S.A., Inc.

CIVIL COVER SHEET

6-05CV 074 C

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS

Andrew Hunt

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

Brown

Defendants Home Depot USA, Inc., and
Home Depot International, Inc.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED(c) Attorney's (Firm Name, Address, and Telephone Number)
Charles E. McDonald (325) 752-7321
Post Office Box 74
Barbers, Texas 76826Attorneys (If Known)
Arthur K. Smith (469) 519-2500
Law Offices of Arthur K. Smith
507 Prestige Circle, Allen, Texas, 75002

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 2 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 5 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 3 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 6 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 7 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|--|---|--|--|
| <input type="checkbox"/> 110 Insurance | <input type="checkbox"/> PERSONAL INJURY | <input type="checkbox"/> PERSONAL INJURY | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 400 State Reapportionment |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 362 Personal Injury - Med Malpractice | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 365 Personal Injury - Product Liability | | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | | <input type="checkbox"/> 450 Commerce |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 330 Federal Employers' Liability | <input type="checkbox"/> 370 Other Fraud | | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 371 Truth in Lending | | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 372 Other Personal Property Damage | | <input type="checkbox"/> 480 Consumer Credit |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 380 Other Personal Property Damage | | <input type="checkbox"/> 490 Cable/Sat TV |
| <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 385 Property Damage | | <input type="checkbox"/> 810 Selective Service |
| <input type="checkbox"/> 190 Other Contract | <input checked="" type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 390 Product Liability | | <input type="checkbox"/> 850 Securities/Commodities/ Exchange |
| <input type="checkbox"/> 195 Contract Product Liability | | | | <input type="checkbox"/> 875 Customer Challenge |
| <input type="checkbox"/> 196 Franchise | | | | <input type="checkbox"/> 12 USC 3410 |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | PROPERTY RIGHTS | |
| <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 510 Motions to Vacate Sentence | <input type="checkbox"/> 861 HIA (1395f) | <input type="checkbox"/> 890 Other Statutory Actions |
| <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> Habeas Corpus: | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 891 Agricultural Acts |
| <input type="checkbox"/> 230 Rent Lease & Ejectment | <input type="checkbox"/> 443 Housing/ Accommodations | <input type="checkbox"/> 530 General | <input type="checkbox"/> 863 DIWC/DIWV (405(g)) | <input type="checkbox"/> 892 Economic Stabilization Act |
| <input type="checkbox"/> 240 Torts to Land | <input type="checkbox"/> 444 Welfare | <input type="checkbox"/> 535 Death Penalty | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> 893 Environmental Matters |
| <input type="checkbox"/> 245 Tort Product Liability | <input type="checkbox"/> 445 Amer w/Disabilities - Employment | <input type="checkbox"/> 540 Mandamus & Other | <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 894 Energy Allocation Act |
| <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 446 Amer w/Disabilities - Other | <input type="checkbox"/> 550 Civil Rights | | <input type="checkbox"/> 895 Freedom of Information Act |
| | <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 555 Prison Condition | | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |
| | | | | <input type="checkbox"/> 950 Constitutionality of State Statutes |
| V. ORIGIN | FEDERAL TAX SUITS | | | |
| <input type="checkbox"/> 1 Original Proceeding | <input checked="" type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) |
| | | | | <input type="checkbox"/> 6 Multidistrict Litigation |
| | | | | <input type="checkbox"/> 7 |
| | | | | Appeal to District Judge from Magistrate Judgment |

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

VI. CAUSE OF ACTION
28 U.S.C. § 1332

Brief description of cause personal injury - damage to reputation & theft

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

\$16,000,000

CHECK YES only if demanded in complaint

JURY DEMAND: Yes NoVIII. RELATED CASE(S)
IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

10-20-05

Arthur K. Smith

FOR OFFICE USE ONLY

RECEIPT # 35230 AMOUNT

\$250.00

APPLYING IFFP

JUDGE

MAG. JUDGE

**United States District Court
Northern District of Texas**

**Supplemental Civil Cover Sheet For Cases Removed
From State Court**

This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S. District Clerk's Office. Additional sheets may be used as necessary.

1. State Court Information:

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

| <u>Court</u> | <u>Case Number</u> |
|--|--------------------|
| 35 th District Court Brown County, Texas | CV0509421 |

2. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code.)

| <u>Party and Party Type</u> | <u>Attorney(s)</u> |
|------------------------------------|---|
| Andrew J. Hunt <i>Plaintiff</i> | Charles E. McDonald State Bar No. 13538000 Post Office Box 74 Bangs, Texas 76823 Telephone: (325) 752-7321 Facsimile: (325) 752-7653 |

Home Depot U.S.A., Inc.
Defendant

Arthur K. Smith
State Bar No. 18534100
LAW OFFICES OF ARTHUR K. SMITH,
a Professional Corporation
507 Prestige Circle
Allen, TX 75002
Telephone: (469) 519-2500
Facsimile: (469) 519-2555

Home Depot, International, Inc.
Defendant

Arthur K. Smith
State Bar No. 18534100
LAW OFFICES OF ARTHUR K. SMITH,
a Professional Corporation
507 Prestige Circle
Allen, TX 75002
Telephone: (469) 519-2500
Facsimile: (469) 519-2555

3. Jury Demand:

Was a Jury Demand made in State Court? _____ Yes No

If "Yes," by which party and on what date?

Party

Date

4. Answer:

Was an Answer made in State Court? Yes _____ No

If "Yes," by which party and on what date?

Party

Date

Party

Date

5. Unserved Parties:

The following parties have not been served at the time this case was removed:

Party

Reason(s) for No Service

None.

Supplemental Civil Cover Sheet**Page - 2****6. Nonsuited, Dismissed or Terminated Parties:**

Please indicate any changes from the style on the State Court papers and the reason for that change:

| <u>Party</u> | <u>Reason</u> |
|--------------|---------------|
| None. | |

7. Claims of the Parties:

The filing party submits the following summary of the remaining claims of each party in this litigation:

| <u>Party</u> | <u>Claim(s)</u> |
|--------------|--------------------------------------|
| Plaintiff | Personal Injury Theft of Property |
| Defendants | Deny All Claims |